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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1659

THE CHASE MANHATTAN BANK, N.A. and CITIBANK, N.A.,

Petitioners,

v.

THE FINANCE ADMINISTRATION OF THE CITY OF NEW YORK AND THE FINANCE ADMINISTRATOR OF THE CITY OF NEW YORK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

PETITIONERS' REPLY TO RESPONDENTS' SECOND SUPPLEMENTAL BRIEF

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In their recently filed "Second Supplemental Brief", respondents raise for the first time in this Court an argument to which petitioners ask leave to submit this brief response.

Respondents now argue that the commercial rent or occupancy tax had not been imposed "by or under authority of any State legislation in effect prior to the enactment of this Act [in 1969] . . ." within the meaning of the federal statute in question. This argument was not advanced before apparently because: (1) it makes no sense in light of the purpose of the federal statute; (2) it is flatly contrary to

federal and New York case law; and (3) it is inconsistent with the opinion of the New York Court of Appeals.

(1) It is undisputed that the only relevant 1970 change which the New York legislature made in the commercial rent or occupancy tax was to increase the rate of that tax. Otherwise the legislature simply continued in effect a tax which had been levied on state banks "by and under the authority" of previous New York state legislation. As a matter of construction of the federal statute in question there is no logical reason for the conclusion that the mere change in the rate of this tax means that it was not a tax in effect prior to 1969. On the contrary, it is clear that the tax in question was imposed on New York state banks prior to that date—exactly the situation that triggered the operation of the affirmative action requirement of the federal statute in question.

(2) Moreover, as a matter of law, it is clear that the commercial rent or occupancy tax was a continuing tax that had been in effect for years prior to the 1970 amendment. In form, Chapter 166 of the Laws of New York, 1970, simply restated the existing statute by providing that it was "amended to read as follows" and (to the extent here relevant) adopted word for word the language of the existing statute except for the new rates. In such a situation the federal decisions, which are controlling here, have consistently held that the statute should be deemed to be continuously in force from the date of the first enactment. *Steffler* v. *Johnston*, 121 F.2d 447 (9th Cir.), *cert. denied*, 314 U.S. 676 (1941); *McClure* v. *United States*, 95 F.2d 744, 749 (9th Cir. 1938), *aff'd on other grounds*, 305 U.S. 472 (1939). Incidentally, the law in the New York state courts is to the same effect. *Moore* v. *Mausert*, 49 N.Y. 332, 335 (1872); *Ely* v. *Holton*, 15 N.Y. 595, 599 (1857); *Baylis* v. *Van Nostrand*, 176 App. Div. 396 (2nd Dep't 1917); *Harwood* v. *City of Rensselaer*, 67 Misc. 2d 504 (Sup. Ct. 1971).

(3) In the Court of Appeals the majority recognized this well-established rule of law, when it stated:

> "It is a well-established proposition of law that an amendment is a reenactment of the statute amended, albeit without any break in the continuity between the statute before amendment and the statute after amendment (see *Lyon* v. *Manhattan Ry. Co.*, 142 NY 298, 303-304)." (Petition, Appendix B-5 to B-6.)

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Respectfully submitted,

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